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No. 97-174

In the Supreme Court of the United States
October Term, 1997

CASS COUNTY, MINNESOTA, et al,

Petitioners,

v.

LEECH LAKE BAND OF CHIPPEWA INDIANS,

Respondent.

On Writ Of Certiorari To The
United States Court Of Appeals
For The Eighth Circuit

BRIEF OF AMICI CURIAE STATES OF MICHIGAN, ALABAMA, CALIFORNIA, COLORADO, IDAHO, IOWA, MONTANA, NEW YORK, OKLAHOMA, and UTAH IN SUPPORT OF PETITIONERS

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22 pp

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QUESTION PRESENTED

Amici Curiae States would state the issue as follows:

Consistent with the decisions of this Court in *Goudy v. Meath*, 203 U.S. 146 (1906) and *Yakima County v. Yakima Indian Nation*, 502 U.S. 251 (1992), may a state or local government impose *ad valorem* property taxes upon reservation land owned in unrestricted fee simple by an Indian tribe or by an individual tribal member where the land was originally patented and removed from federal trust or from the public domain pursuant to a treaty or statute other than the General Allotment Act?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Authorities

INTEREST OF THE AMICI CURIAE

This case presents the question of whether the States and their political subdivisions may continue to impose *ad valorem* taxes on fee patented lands located within Indian reservations whenever those lands are acquired or held in unrestricted fee simple by the resident Indian tribe or its members.

While the specific controversy before the Court in this case concerns lands in the State of Minnesota which were initially disposed of under the terms of the Nelson Act, 25 Stat. 642 (January 14, 1889), the underlying principles governing the resolution of this dispute will directly affect every state containing Indian reservation lands. Indeed, this issue has already resulted in litigation in at least six states, and has met, at best, with varying and inconsistent decisions. *See, e.g., County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992); *Lummi Indian Tribe v. Whatcom County*, 5 F.3d 1355 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994); *United States v. Michigan*, 106 F.3d 130 (6th Cir. 1997), *petition for cert. filed*, 66 U.S.L.W. 3093 (U.S. June 30, 1997) (No. 97-14); *Southern Ute Indian Tribe v. Board of County Commissioners of La Plata*, 855 F. Supp. 1194 (D. Colo. 1994), *vacated & remanded with instructions to dismiss on mootness grounds*, No. 94-1310 (10th Cir. July 20, 1995); *see also Thompson v. County of Franklin*, Civil No. 92-CV-1258 NPM-DNH (N.D.N.Y.) (pending and undecided).

Each of the States represented in this brief will be directly affected by the decision of the Court in this case. Specifically, each of these States contains fee patented lands which have been acquired and are held in unrestricted fee simple by Indian tribes or individual tribal members and which would be subject to a claim of exemption under the analysis adopted by the Eighth Circuit in this case.

This controversy is by no means academic. If the view adopted by the Eighth Circuit were to be upheld, the States, and their local political subdivisions, would suffer very real and substantial consequences.

First and foremost would be the reduction in the tax base in reservation areas. In most of the States, property taxes are imposed at the local government level and are used to support the public schools and other essential local services, all of which are generally available without restriction to area residents including tribal members. In many of these areas, particularly those where the property tax base is already limited as the result of substantial amounts of land owned or held in trust by the federal government, the exemption of these additional lands would severely strain the ability of the affected local governments to provide these services. Moreover, the severity of this problem is likely to increase. Many reservation areas are currently experiencing a marked increase in the reacquisition of lands by tribes and their members. This is particularly true in and around those reservation areas that are experiencing significant tribal economic development due to Indian gaming activities. If these lands were removed from the tax rolls upon acquisition by a tribe or a tribal member, the impact upon local government and local services would be devastating.

Aside from the direct loss of tax revenues, the Eighth Circuit's narrow reading of *Yakima* would also significantly increase both the complexity and the expense of property tax administration in reservation areas. In many cases, it would become necessary to conduct extensive parcel by parcel title searches to determine whether a given parcel originally passed out of trust under the General Allotment Act, rendering it taxable under *Yakima*, or whether it originally passed out of trust under the terms of some other statute or treaty provision, in which case the tax status may be open to question and to litigation. The difficulty of this problem is well illustrated by the decision of the Eighth Circuit in the *Leech Lake* case itself: those parcels *allotted* to tribal members under the Nelson Act were deemed taxable – but only if the original patents were issued after the adoption of the Burke Amendment in 1906 – while other parcels, sold as pine lands or homestead lands under different provisions of the very same act, were deemed exempt. The problem is further complicated by the fact that many tribes do not routinely make their membership rolls

available, making it difficult for the assessors to determine which property owners are in fact enrolled tribal members.

SUMMARY OF ARGUMENT

In *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992), this Court held that, when Congress enacted section 5 of the General Allotment Act of 1887, 24 Stat. 388 (February 8, 1887) (now codified, as amended, at 25 U.S.C. § 331 *et seq*), authorizing the alienation of Indian lands allotted under that act, Congress also consented to the imposition of state *ad valorem* taxes upon such lands, even where those lands are owned by a tribe or its members. At the conclusion of the Court's opinion, it explicitly left open the question of whether a different result might obtain as to lands patented in fee and sold pursuant to some other legal authority separate from the General Allotment Act:

> The Yakima Nation contends it is not clear whether the parcels at issue in this case were patented under the General Allotment Act, rather than under some other statutes in force prior to the Indian Reorganization Act. E.g., 25 U.S.C. §§ 320, 379, 404, 405. *We leave for resolution on remand that factual point, and the prior legal question whether it makes any difference.*

502 U.S. at 270 (emphasis added).

Shortly thereafter, the Ninth Circuit addressed that unresolved question in *Lummi Indian Tribe v. Whatcom County*, 5 F.3d 1355 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994), finding that the underlying rationale adopted by this Court in *Yakima* was not limited to the General Allotment Act but also extended to similar lands which had been allotted, patented, and removed from trust under the terms of a treaty.

Two Circuits have now issued decisions directly conflicting with *Lummi* – and, we believe, directly conflicting with this Court's decision in *Yakima*. The Eighth Circuit in the instant case, *Leech Lake Band of Chippewa Indians v. Cass County, Minnesota*, 108 F.3d 820 (8th Cir. 1997), and the Sixth Circuit in *United States v. Michigan*, 106 F.3d 130 (6th Cir. 1997), *petition for cert. filed*, 66 U.S.L.W. 3093 (U.S. June 30, 1997), have each adopted a narrowly limited reading of *Yakima*. Both courts have held that this Court's decision in *Yakima* applies only to lands allotted and removed from trust under the General Allotment Act and, even then, only by virtue of the express tax exemption language added to that Act by the Burke Amendment, 34 Stat. 182 (May 8, 1906). Indeed, the Eighth Circuit has gone so far as to conclude, in effect, that the decision in Yakima applies only to lands actually patented *after* the effective date of the Burke Amendment in 1906. 108 F.3d at 829.

We believe that the decision of the Eighth Circuit, and that of its sister circuit in *United States v. Michigan*, misreads this Court's analysis in *Yakima*. In upholding the right of the State in that case to impose its *ad valorem* property tax upon the unrestricted fee patented lands in *Yakima*, this Court specifically found that when Congress authorized the alienation of such lands in section 5 of the General Allotment Act, it rendered them subject to such taxation. In so holding, the Court expressly reaffirmed its earlier decision in *Goudy v. Meath*, 203 U.S. 146 (1906), which had reached a similar conclusion contemporaneously with the adoption of the General Allotment Act. This conclusion clearly did not depend upon the subsequent language added to the General Allotment Act by the Burke Amendment. It is true that the Court went on to state that the explicit language later added by the Burke Amendment made the intent of Congress "*more* clear," 502 U.S. at 264; it is also true that the Court utilized the Burke Amendment as a guide in interpreting the scope of that Congressional intent. Nothing in this discussion, however, even remotely suggests that the original language of § 5 was not itself sufficiently clear so as to authorize the taxation of such land.

This conclusion is consistent with the history and purpose of the federal allotment policy and with the explicit

treatment of this issue by all three branches of the federal government from the time of the original adoption of that policy through into modern times. The very purpose of the General Allotment Act, and of the other statutes and treaty provisions containing similar provisions, was to convert Indian people into citizens and landowners, with all of the corresponding rights and duties including payment of property taxes. Congress recognized that this transition would have to be gradual, and thus provided for trust status or restraints upon alienation for varying periods of time. In this context, the very provisions authorizing the temporary restrictions are clear evidence that Congress understood and intended that, upon the lifting of such restrictions, these patented lands would become subject to property taxes.

ARGUMENT

I.

THE DECISIONS OF THIS COURT IN *GOUDY* AND *YAKIMA* EXPLICITLY HELD THAT, WHEN CONGRESS AUTHORIZES THE PATENTING OF AND REMOVAL OF TRUST RESTRICTIONS UPON RESERVATION LANDS, THAT AUTHORIZATION CONSTITUTES CONGRESSIONAL CONSENT TO THE IMPOSITION OF *AD VALOREM* PROPERTY TAXES UPON SUCH UNRESTRICTED FEE PATENTED LAND.

In *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992), this Court was confronted with the question of whether the County of Yakima, Washington, could impose its *ad valorem* property tax upon lands allotted under the General Allotment Act which had been patented and removed from trust status and had come to be owned in unrestricted fee simple by the Yakima tribe or by its members. The Court expressly recognized and reaffirmed the rule that courts will decline to find that Congress has authorized state taxation of Indians

within a reservation unless it has "'made its intention to do so unmistakably clear.'" 502 U.S. at 258, citing *Montana v. Blackfeet Tribe*, 471 U.S. 759, 765 (1985). However, the Court concluded that Congress had in fact provided such authorization in section 5 of the General Allotment Act. That Act provided for the allotment of Indian reservation lands throughout the United States and, in section 5, further provided that:

> [U]pon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall . . . declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made . . . and that *at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever* . . . .

24 Stat. 388, 389 (February 8, 1887) (emphasis added). Relying upon this statutory provision, and upon its own earlier decision in *Goudy v. Meath*, 203 U.S. 146 (1906), the *Yakima* Court concluded that:

> when § 5 [of the General Allotment Act] rendered the allotted lands alienable and encumberable, it also rendered them subject to assessment and forced sale for taxes.

Yakima, 502 U.S. at 263-264.

Having stated this explicit conclusion, the Court went on to observe that Congress later "made this implication of § 5 more explicit, and its nature more clear," in 1906 when it passed the Burke Act, 34 Stat. 182 (May 8, 1906). That act amended § 5 of the General Allotment Act by adding more explicit language specifying that, following the issuance of an unrestricted fee patent, "*all restrictions as to* sale,

incumbrance, or *taxation* of said land *shall be removed*." (Emphasis added.) *See*, 25 U.S.C. § 349, as amended. This amendatory language, the Court stated, "reaffirmed" the conclusion that section 5 of the General Allotment Act was intended to permit the imposition of state property taxes upon such unrestricted fee lands. *Yakima*, 502 U.S. at 264.

In the instant case, the Eighth Circuit seized upon this discussion of the Burke Act in *Yakima*, characterizing it as the essential linchpin of the Court's decision. According to the Eighth Circuit, the decision in *Yakima* "repeatedly pointed to the Burke Act proviso in § 6 as the primary source of clear congressional intent to allow the *ad valorem* tax levied by Yakima County." 108 F.3d at 825. In other words, in the view of the Eighth Circuit, had it not been for the new language added by the Burke Act, the Court in *Yakima* would not have found property taxes to be authorized under § 5 of the General Allotment Act. This reading of *Yakima* is simply wrong; it essentially disregards the explicit finding in *Yakima* that "when § 5 rendered the allotted lands alienable and encumberable, it also rendered them subject to assessment and forced sale for taxes," 502 U.S. at 263-264, and it also disregards the Court's explicit reliance upon and reaffirmation of its earlier decision in *Goudy v. Meath, supra*.

The lands at issue in *Goudy* had been patented pursuant to treaty provisions rather than under the provisions of the General Allotment Act and had initially been protected by restrictions against alienation. *Goudy*, 203 U.S. at 146-147. Citing the provisions of the General Allotment Act, *Goudy* held that, upon the lifting of the restrictions upon alienation and the issuance of a fee patent, the lands became subject to property taxes. The Court further concluded that the treaty language which authorized the eventual lifting of restrictions upon alienation for allotted lands was clearly intended to encompass "involuntary as well as voluntary alienation." *Id.* at 149-150. *Goudy*, accordingly, stands unequivocally for the proposition that, after federal restrictions upon alienation are removed, unrestricted fee patented Indian lands become subject to state taxation. *See also, Pennock v. Board of County Comm'rs*, 103 U.S. 44, 48 (1881).

II.

THE RESULT REACHED BY THIS COURT IN *GOUDY* AND *YAKIMA* IS CONSISTENT WITH THE LONGSTANDING TREATMENT OF THIS ISSUE BY ALL THREE BRANCHES OF THE FEDERAL GOVERNMENT AND WITH THE HISTORY AND PURPOSE OF THE ALLOTMENT POLICY ITSELF.

The result reached by this Court in *Goudy* and reaffirmed in *Yakima* is clearly correct and is consistent with the general understanding and treatment of this issue dating back to the time of the enactment of the General Allotment Act. From that time through to the present, it has been generally understood and accepted that, in the absence of federal trust restrictions, fee patented reservation lands are subject to *ad valorem* taxes. This understanding is reflected in the decisions and opinions of both the executive and judicial branches as well as in the laws enacted by Congress itself.

The executive branch made its understanding known as early as 1888, shortly after the enactment of the General Allotment Act, when the Attorney General of the United States issued an opinion to the Secretary of the Interior concerning the tax status of lands patented to individual Indians under the provisions of four separate acts including the General Allotment Act. 19 Op. Att'y Gen. 161 (July 27, 1888.) Each of the statutes in question imposed trust restrictions upon the patented land for a specific term of years ranging, depending upon the particular act, from five to twenty-five years. The Attorney General concluded that in each instance, by virtue of the trust restrictions, the lands so patented were exempt from taxation *for the period during which the trust restrictions remained in place. See, e.g., id.* at 169. This conclusion reflected the clear understanding of the Attorney General that, upon the expiration of the trust period and the removal of restrictions upon alienation, the lands patented under each of these acts would become subject to taxation by the States.

This understanding is even more directly stated in subsequent opinions issued by the Department of the Interior. For example, a 1924 opinion issued by the Department concluded that "[w]hen an allottee voluntarily applies for a removal of restrictions [by requesting issuance of an unrestricted fee patent] prior to the expiration of the period of exemption originally provided for, the granting of such application subjects those lands to taxation even in the hands of the original allottee." 50 L.D. 691, 694 (1924); *accord*, 53 L.D. 133, 136 (1930); *see generally* Felix S. Cohen, *Handbook of Federal Indian Law*, 259 (1942) ("[s]hould [an allottee] . . . apply for the issuance of a fee patent and be accorded one pursuant to law, there seems no reason to believe that his lands would not thereby become subject to state taxation"); U. S. Dep't. of Interior, *Federal Indian Law*, 859 (1958) (same).

A similar understanding is reflected in the opinions of this Court during the period following the enactment of the General Allotment Act. The clearest and most direct example of this is, of course, the decision in *Goudy, supra*, which explicitly addressed the issue and concluded that patented lands do become taxable upon the withdrawal of the trust restrictions. However, while no other case decided by this Court directly addressed this question until *Yakima*, numerous decisions rather clearly demonstrate the Court's understanding in this regard.

For example, in *United States v. Rickert*, 188 U.S. 432 (1903), the Court held that trust lands allotted under the General Allotment Act were exempt from taxation by the State and that this exemption extended to permanent improvements made upon those lands. Addressing first the issue of the trust land itself, the Court concluded that:

> *[U]ntil a regular patent conveying the fee was issued* to the several allottees, it would follow that there was no power in the State of South Dakota, for state or municipal purposes, to assess and tax the lands in question *until at least the fee was conveyed to the Indians.* . . .

Id., at 437 (emphasis added). Similarly, with respect to the permanent improvements, the Court concluded:

> *While the title to the land remained in the United States*, the permanent improvements could no more be sold for local taxes than could the land to which they belonged.

Id., at 442 (emphasis added).

Issued over 35 years later and subsequent to passage of the Indian Reorganization Act, this Court's decision in *Board of County Comm'rs v. United States*, 308 U.S. 343 (1939), reflected the same understanding. That case involved a claim for repayment with interest of property taxes collected by the County from a tribal member for lands originally patented in trust under the General Allotment Act. In 1918, over the objection of the owner, the Secretary of the Interior canceled the trust patent and instead issued a fee simple patent. As a result, the County thereafter began to subject the land to regular property taxes. In 1927, Congress enacted legislation authorizing the Secretary of the Interior not only to reinstate the trust status of such parcels, but to actually *cancel* the fee simple patents which had been issued over the objection of the allottees. Significantly, the 1927 Act went on to explicitly provide that, "upon cancellation of such patent in fee simple the land shall have the same status *as though such fee patent had never been issued.*" *See*, 44 Stat. 1247 (February 26, 1927), as amended by 46 Stat. 1205 (February 21, 1931), 25 U.S.C. § 352a (emphasis added). In 1935, the United States finally canceled the patent in question. The following year, the United States successfully brought suit in U.S. District Court to recover both the taxes which the County had collected and interest on that money. On appeal to the Supreme Court, the County did not contest its liability to repay the taxes, instead challenging only the Government's right to recover interest thereon. On this question, the Court ruled for the County, holding that no interest was due. In so holding, the Court demonstrated rather clearly its understanding that, until the unrestricted fee patent was canceled, the County had every reason to believe that the land was properly subject to taxation:

> Jackson County in all innocence acted in reliance on a fee patent given under the hand of the President of the United States. Even after Congress in 1927 authorized the Secretary of the Interior to cancel such a patent, it was not until 1935 that such cancellation was made. Here is a long, unexcused delay in the assertion of a right for which Jackson County should not be penalized. *By virtue of the most authoritative semblance of legitimacy under national law, the land of M-Ko-Quah-Wah and the lands of other Indians had become part of the economy of Jackson County.* For eight years after Congress had directed attention to the problem, those specially entrusted with the intricacies of Indian law did not call Jackson County's action into question. Whatever may be her unfortunate duty to restore the taxes *which she had every practical justification for collecting at the time*, no claim of fairness calls upon her also to pay interest for the use of the money *which she could not have known was not properly hers.*

Id., at 352 (emphasis added).

This understanding was reiterated by this Court as recently as 1980 in *United States v. Mitchell*, 445 U.S. 535, 544 (1980), where the Court observed that "[i]t is plain . . . that when Congress enacted the General Allotment Act, it intended that the United States 'hold the land . . . in trust' . . . because it wished to prevent alienation of the land and to ensure that allottees would be immune from the state taxation."

The understanding that fee patented Indian lands are subject to state imposed *ad valorem* taxes in the absence of federally imposed trust restrictions is likewise evident in numerous statutes enacted by Congress which authorize or impose explicit restrictions upon the taxation of certain lands acquired by the Secretary of the Interior for Indian tribes or individual Indians – restrictions that would be

entirely redundant if such lands were not otherwise subject to taxation. For example, 25 U.S.C. § 501, as amended, authorizes the Secretary of the Interior to acquire agricultural lands on behalf of a tribe, band, group, or individual Indian and further provides that:

> [L]ands so acquired shall be taken in the name of the United States, in trust for the tribe, band, group, or individual Indian for whose benefit such land is so acquired, and *while the title thereto is held by the United States said lands shall be free from any and all taxes*. . . . [Emphasis added.]

Similar provisions apply to homestead lands purchased out of the trust or restricted funds of individual Indians, 25 U.S.C. § 412a, lands purchased with the money received from the sale of restricted trust lands, 25 U.S.C. § 409a, and lands purchased by the Secretary for the purpose of providing land for Indians under 25 U.S.C. § 465. These provisions, enacted in the 1930's and continuing in effect today, indicate the clear understanding of Congress that the tax exempt status of fee patented Indian land depends upon its being placed in trust or restricted status and that, in the absence of such explicit restrictions, such lands are subject to state imposed *ad valorem* property taxes.

This general understanding that unrestricted fee patented lands would be subject to state property taxes reflects the fundamental underlying purpose and intent of the various statutes and treaty provisions providing for allotment during the last half of the 19th century. This is evident in the Attorney General's July 27, 1888, opinion, *supra*. There, commenting upon all four of the allotment acts under consideration in the opinion (and not merely upon the General Allotment Act), the Attorney General stated:

> The interesting feature of this legislation is that it marks a new epoch in the history of the Indians, namely, that in which Congress has begun to deal with them as individuals, and not only as nations, tribes, or bands, as heretofore. *It is dismemberment of the tribes and*

> *bands, and absorption, as citizens, of the individuals composing them by the States and Territories containing the lands on which such individuals settle or may be settled, that is the policy of this new legislation.*
>
> But Congress has not deemed it safe, in making the Indian a freeholder, to give him at once the same control over the land as other freeholders enjoy. The legislation above mentioned deprives the Indian settler of the right of conveying or encumbering the land, in any way, for a period stated, or provides that it shall be held by the United States for a given time in trust for the sole use and benefit of the Indian, and, at the expiration of such time, be conveyed to him by patent.
>
> . . . It is only after a considerable period of probation that, *he can be educated to understand the dignity and responsibilities that belong to citizenship and the ownership of property and it is to protect him, while receiving this education, that Congress has placed the above-mentioned restraints upon his property rights*. . . .

Id., at 164-165 (emphasis added); *see also, Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649, 650 n. 1 (1976) ("[t]he objects of [the allotment] policy were to end tribal land ownership and to substitute private ownership, on the view that private ownership by individual Indians would better advance their assimilation as self-supporting members of our society and relieve the Federal Government of the need to continue supervision of Indian affairs") and *Montana v. United States*, 450 U.S. 544, 559 n. 9 (1981) ("[t]he policy of the [various allotment acts] was the eventual assimilation of the Indian population and the 'gradual extinction of Indian reservations and Indian titles'" and "throughout the congressional debates, allotment of Indian Land was consistently equated with the dissolution of tribal affairs and jurisdiction"). (Citation omitted.) It is also important to recognize that the severalty provisions undergirding the

General Allotment Act did not constitute a radical shift in Congressional policy but instead represented the fruition of federal practice begun much earlier in the nineteenth century. *See generally* Francis Paul Prucha, *Indian Policy in the United States* 237 (1981) ("Allotments of land in severalty had been advocated from the days of Thomas Jefferson, and piecemeal legislation had authorized allotments for a number of tribes. Now such a process was too slow and uncertain for the new reformers. The panacea they sought was a general allotment law that would turn all Indians into individual land owners and break up traditional tribal relations.")

Thus, Congress' very purpose in allotting and patenting lands to individual Indians was to transform those allottees into citizens and property owners, with all of the rights and duties thereof, including the payment of property taxes. The imposition by the Congress of temporary restraints upon alienation, in this context, not only represented an attempt to protect the allottees during this intended period of transition, but also constituted an explicit recognition that, in the absence of such restrictions, the lands would be fully alienable and taxable.

It is true, as this Court reiterated in *Yakima*, that its cases "reveal a consistent practice of declining to find that Congress has authorized state taxation unless it has 'made its intention to do so unmistakably clear.'" *Yakima*, 502 U.S. at 258. This practice, however, has never functioned as a mandate to disregard the historical context in which that Congressional intent is manifested. As the foregoing authorities demonstrate, at the time the various allotment provisions were adopted, whether by statute or by treaty, and continuing through to modern times, all three branches of the federal government, including the Congress, have understood that the removal of trust restrictions and the issuance of an unrestricted fee patented rendered such fee lands subject to *ad valorem* property taxes. This understanding reflects the fundamental purpose and intent of the various allotment provisions themselves. Given this historical context and common understanding, it is reasonable to conclude, as this Court did in *Yakima*, that, when Congress authorizes the patenting of reservation lands,

and further provides for explicitly temporary restrictions upon the alienation and taxation of those lands, it has made "unmistakably clear" its understanding and intent that those lands will be subject to taxation upon the expiration or removal of those restraints.

Finally, this conclusion with respect to *allotted* lands logically must be extended to *all* reservation lands owned in fee by a tribe or its members. No principled reason exists to justify treating neighboring parcels of land differently for taxation purposes based on the precise method by which they originally left the public domain and passed into fee ownership. Congress plainly did not contemplate such a result, and it should not be wrought by a judge-made rule whose purpose is to give expression to, not frustrate, Congressional intent. It thus makes no sense to contend that lands that were sold by the Federal Government to non-Indians, such as the pine and the homesteaded lands here, should become *non*-taxable when subsequently acquired by the respondent or its members but that neighboring lands similarly acquired by the tribe *are* taxable merely because they were originally allotted to a tribal member. Congress anticipated that land ownership and the right to alienate those ownership rights were to be accompanied by the tax obligations borne generally by other landowners. The decision below and respondent's position before this Court, in short, invoke the right rule but ignore its animating objective of carrying out Congress' otherwise manifest will.

CONCLUSION

For these reasons, Amici States respectfully ask this Court to reverse the determination of the Eighth Circuit in this case and to hold that unrestricted fee patented lands owned by Indian tribes or by tribal members continue to be subject to *ad valorem* property taxes imposed by state and local governments.

Respectfully submitted,

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